

STATE OF MICHIGAN  
COURT OF APPEALS

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GARY S. HANN,

Plaintiff-Appellant,

v

JOHN D. ROACH, JR., and LAW OFFICES OF  
JOHN D. ROACH, JR.,

Defendants-Appellees.

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UNPUBLISHED

October 26, 2006

No. 264434

Jackson Circuit Court

LC No. 05-005609-NM

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff appeals from an order of Jackson Circuit Court Judge Charles Nelson that dismissed his legal malpractice claim on the grounds that he failed to file it within the statutory period of limitations. We affirm.

Pursuant to a plea agreement,<sup>1</sup> plaintiff was convicted of child sexually abusive activity, MCL 750.145c(2), and using the Internet to induce another to commit a crime, MCL 750.145d(2)(f), and was sentenced to concurrent terms of two to twenty years in prison. Plaintiff's appellate attorney, defendant,<sup>2</sup> concluded that there were no meritorious issues upon which to appeal. On July 2, 2003, an order of withdrawal was entered, thus marking the end of defendant's representation of plaintiff.

Plaintiff prepared a complaint that alleged malpractice for defendant's failure to pursue an appeal. However, the complaint was not filed until July 22, 2005, as Judge Nelson noted in his order upon review of the pleadings bearing that date, and in denying reconsideration on August 10, 2005. This filing date was thus more than two years after the termination of the attorney-client relationship, and so untimely according to MCL 600.5805(5).

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<sup>1</sup> Plaintiff asserts that he "has been convicted . . . without making a plea," but offers no explanation for why all documents in the record suggest otherwise.

<sup>2</sup> Because defendants consist of attorney Roach and the business entity under which he practices, in this opinion we will use the singular "defendant" without distinguishing between the two.

Plaintiff asserts that his complaint was timely, but provides no basis upon which to challenge the recognized date of July 22, 2005, beyond showing that the mailing date was June 17, 2005, and arguing that the court “presumably” received his package shortly thereafter. Plaintiff further states that “there was no date stamp on the documents,” but in fact the complaint in the file comprising the record plainly bears the date stamp “FILED 05 JUL 22 AM 9:30.”

A civil action is commenced not by placing a complaint in the mail, but by filing it with a court. MCR 2.101(B). Plaintiff suggests that the circuit court received, but deliberately delayed processing, the complaint, but offers no evidence of such pernicious inaction beyond noting how much time passed between mailing and filing. Plaintiff was responsible for ensuring that his complaint was filed. Because the record indicates filing beyond the period of limitations, with no evidence of actual mischief on the part of court personnel, we affirm the circuit court’s decision to dismiss this case.

Plaintiff additionally complains that Judge Nelson dismissed the case administratively, before the case had been assigned to him or any other judge. See *Tingley v Kortz*, 262 Mich App 583, 588; 688 NW2d 291 (2004) (dispositive rulings are not exercises of administrative authority). It does appear in this instance that Judge Nelson initially dismissed the case without its having been assigned to him or any other judge. However, the lower court’s register of actions plainly indicates assignment to Judge Nelson as of August 5, 2005, several days before Judge Nelson reiterated the dismissal on the motion for reconsideration. This later action thus cured any irregularity attending to the initial dismissal.

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Bill Schuette